

109TH CONGRESS
1ST SESSION

H. R. 1372

To amend title XVIII of the Social Security Act to impose minimum nurse staffing ratios in Medicare participating hospitals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mrs. CAPPS (for herself and Mr. SIMMONS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to impose minimum nurse staffing ratios in Medicare participating hospitals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Quality Nursing Care
5 Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) There are hospitals throughout the United
2 States that have inadequate staffing of registered
3 nurses to protect the well-being and health of the
4 patients.

5 (2) Studies show that the health of patients in
6 hospitals is directly proportionate to the number of
7 registered nurses working in the hospital.

8 (3) There is a critical shortage of registered
9 nurses in the United States.

10 (4) The effect of that shortage is revealed in
11 unsafe staffing levels in hospitals.

12 (5) Patient safety is adversely affected by these
13 unsafe staffing levels, creating a public health crisis.

14 (6) Registered nurses are being required to per-
15 form professional services under conditions that do
16 not support quality health care or a healthful work
17 environment for registered nurses.

18 (7) As a payer for inpatient and outpatient hos-
19 pital services for individuals entitled to benefits
20 under the program established under title XVIII of
21 the Social Security Act, the Federal Government has
22 a compelling interest in promoting the safety of such
23 individuals by requiring any hospital participating in
24 such program to establish minimum safe staffing
25 levels for registered nurses.

1 **SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS**
2 **BY MEDICARE PARTICIPATING HOSPITALS.**

3 (a) REQUIREMENT OF MEDICARE PROVIDER AGREE-
4 MENT.—Section 1866(a)(1) of the Social Security Act (42
5 U.S.C. 1395cc(a)(1)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (U);

8 (2) by striking the period at the end of sub-
9 paragraph (V) and inserting “, and”; and

10 (3) by inserting after subparagraph (V) and be-
11 fore the end matter the following:

12 “(W) in the case of a hospital—

13 “(i) to adopt and implement a staffing
14 system that meets the requirements of sec-
15 tion 1898;

16 “(ii) to meet the requirements of such
17 section relating to—

18 “(I) records maintenance;

19 “(II) data collection; and

20 “(III) data submission; and

21 “(iii) to meet the requirements of
22 such section relating to non-discrimination
23 and retaliation.”.

24 (b) REQUIREMENTS.—Title XVIII of the Social Secu-
25 rity Act (42 U.S.C. 1395 et seq.) is amended by adding
26 at the end the following:

1 “STAFFING REQUIREMENTS FOR MEDICARE
2 PARTICIPATING HOSPITALS

3 “SEC. 1898. (a) ESTABLISHMENT OF STAFFING SYS-
4 TEM.—Each participating hospital shall adopt and imple-
5 ment a staffing system that ensures a number of reg-
6 istered nurses on each shift and in each unit of the hos-
7 pital to ensure appropriate staffing levels for patient care.
8 A staffing system adopted and implemented under this
9 section shall—

10 “(1) be developed on the basis of input from
11 the direct care-giving registered nurse staff or,
12 where nurses are represented, with the applicable
13 recognized or certified collective bargaining rep-
14 resentatives of the registered nurses;

15 “(2) be based upon the number of patients and
16 the level and variability of intensity of care to be
17 provided, with appropriate consideration given to ad-
18 missions, discharges and transfers during each shift;

19 “(3) account for contextual issues affecting
20 staffing and the delivery of care, including architec-
21 ture and geography of the environment and available
22 technology;

23 “(4) reflect the level of preparation and experi-
24 ence of those providing care;

1 “(5) account for staffing level effectiveness or
2 deficiencies in related health care classifications, in-
3 cluding but not limited to, certified nurse assistants,
4 licensed vocational nurses, licensed psychiatric tech-
5 nicians, nursing assistants, aides and orderlies;

6 “(6) reflect staffing levels recommended by spe-
7 cialty nursing organizations;

8 “(7) subject to subsection (b), establish
9 upwardly adjustable registered nurse-to-patient ra-
10 tios based upon registered nurses’ assessment of pa-
11 tient acuity and existing conditions;

12 “(8) provide that a registered nurse shall not be
13 assigned to work in a particular unit without first
14 having established the ability to provide professional
15 care in such unit; and

16 “(9) be based on methods that assure validity
17 and reliability.

18 “(b) LIMITATION.—A staffing system adopted and
19 implemented pursuant to subsection (a) may not—

20 “(1) set registered-nurse levels below those re-
21 quired by any Federal or State law or regulation; or

22 “(2) utilize any minimum registered nurse-to-
23 patient ratio established pursuant to subsection
24 (a)(7) as an upper limit on the staffing of the hos-
25 pital to which such ratio applies.

1 “(c) REPORTING, AND RELEASE TO PUBLIC, OF CER-
2 TAIN STAFFING INFORMATION.—

3 “(1) REQUIREMENTS FOR HOSPITALS.—Each
4 participating hospital shall—

5 “(A) post daily for each shift, in a clearly
6 visible place, a document that specifies in a uni-
7 form manner (as prescribed by the Secretary)
8 the current number of licensed and unlicensed
9 nursing staff directly responsible for patient
10 care in each unit of the hospital, identifying
11 specifically the number of registered nurses;

12 “(B) upon request, make available to the
13 public—

14 “(i) the nursing staff information de-
15 scribed in subparagraph (A); and

16 “(ii) a detailed written description of
17 the staffing system established by the hos-
18 pital pursuant to subsection (a); and

19 “(C) submit to the Secretary in a uniform
20 manner (as prescribed by the Secretary) the
21 nursing staff information described in subpara-
22 graph (A) through electronic data submission
23 not less frequently than quarterly.

24 “(2) SECRETARIAL RESPONSIBILITIES.—The
25 Secretary shall—

1 “(A) make the information submitted pur-
2 suant to paragraph (1)(C) publicly available, in-
3 cluding by publication of such information on
4 the Internet site of the Department of Health
5 and Human Services; and

6 “(B) provide for the auditing of such infor-
7 mation for accuracy as a part of the process of
8 determining whether an institution is a hospital
9 for purposes of this title.

10 “(d) RECORD-KEEPING; DATA COLLECTION; EVAL-
11 UATION.—

12 “(1) RECORD-KEEPING.—Each participating
13 hospital shall maintain for a period of at least 3
14 years (or, if longer, until the conclusion of pending
15 enforcement activities) such records as the Secretary
16 deems necessary to determine to whether the hos-
17 pital has adopted and implemented a staffing system
18 pursuant to subsection (a).

19 “(2) DATA COLLECTION ON CERTAIN OUT-
20 COMES.—The Secretary shall require the collection,
21 maintenance, and submission of data by each par-
22 ticipating hospital sufficient to establish the link be-
23 tween the staffing system established pursuant to
24 subsection (a) and—

1 “(A) patient acuity from maintenance of
2 acuity data through entries on patients’ charts;

3 “(B) patient outcomes that are nursing
4 sensitive, such as patient falls, adverse drug
5 events, injuries to patients, skin breakdown,
6 pneumonia, infection rates, upper gastro-
7 intestinal bleeding, shock, cardiac arrest, length
8 of stay, and patient re-admissions;

9 “(C) operational outcomes, such as work-
10 related injury or illness, vacancy and turnover
11 rates, nursing care hours per patient day, on-
12 call use, overtime rates, and needle-stick inju-
13 ries; and

14 “(D) patient complaints related to staffing
15 levels.

16 “(3) EVALUATION.—Each participating hospital
17 shall annually evaluate its staffing system and estab-
18 lished minimum registered nurse staffing ratios to
19 assure on-going reliability and validity of the system
20 and ratios. The evaluation shall be conducted by a
21 joint management-staff committee comprised of at
22 least 50 percent of registered nurses who provide di-
23 rect patient care and where nurses are represented,
24 with the involvement of the applicable recognized or

1 certified collective bargaining representatives of the
2 registered nurses.

3 “(e) ENFORCEMENT.—

4 “(1) RESPONSIBILITY.—The Secretary shall en-
5 force the requirements and prohibitions of this sec-
6 tion.

7 “(2) PROCEDURES FOR RECEIVING AND INVES-
8 TIGATING COMPLAINTS.—The Secretary shall estab-
9 lish procedures under which—

10 “(A) any person may file a complaint that
11 a participating hospital has violated a require-
12 ment or a prohibition of this section; and

13 “(B) such complaints are investigated by
14 the Secretary.

15 “(3) REMEDIES.—If the Secretary determines
16 that a participating hospital has violated a require-
17 ment of this section, the Secretary—

18 “(A) shall require the facility to establish
19 a corrective action plan to prevent the recur-
20 rence of such violation; and

21 “(B) may impose civil money penalties
22 under paragraph (4).

23 “(4) CIVIL MONEY PENALTIES.—

24 “(A) IN GENERAL.—In addition to any
25 other penalties prescribed by law, the Secretary

1 may impose a civil money penalty of not more
2 than \$10,000 for each knowing violation of a
3 requirement of this section, except that the Sec-
4 retary shall impose a civil money penalty of
5 more than \$10,000 for each such violation in
6 the case of a participating hospital that the
7 Secretary determines has a pattern or practice
8 of such violations (with the amount of such ad-
9 ditional penalties being determined in accord-
10 ance with a schedule or methodology specified
11 in regulations).

12 “(B) PROCEDURES.—The provisions of
13 section 1128A (other than subsections (a) and
14 (b)) shall apply to a civil money penalty under
15 this paragraph in the same manner as such
16 provisions apply to a penalty or proceeding
17 under section 1128A.

18 “(C) PUBLIC NOTICE OF VIOLATIONS.—

19 “(i) INTERNET SITE.—The Secretary
20 shall publish on the Internet site of the
21 Department of Health and Human Serv-
22 ices the names of participating hospitals on
23 which civil money penalties have been im-
24 posed under this section, the violation for
25 which the penalty was imposed, and such

1 additional information as the Secretary de-
2 termines appropriate.

3 “(ii) CHANGE OF OWNERSHIP.—With
4 respect to a participating hospital that had
5 a change in ownership, as determined by
6 the Secretary, penalties imposed on the
7 hospital while under previous ownership
8 shall no longer be published by the Sec-
9 retary of such Internet site after the 1-
10 year period beginning on the date of
11 change in ownership.

12 “(f) WHISTLE-BLOWER PROTECTIONS.—

13 “(1) PROHIBITION OF DISCRIMINATION AND
14 RETALIATION.—A participating hospital shall not
15 discriminate or retaliate in any manner against any
16 patient or employee of the hospital because that pa-
17 tient or employee, or any other person, has pre-
18 sented a grievance or complaint, or has initiated or
19 cooperated in any investigation or proceeding of any
20 kind, relating to the staffing system or other re-
21 quirements and prohibitions of this section.

22 “(2) RELIEF FOR PREVAILING EMPLOYEES.—
23 An employee of a participating hospital who has
24 been discriminated or retaliated against in employ-
25 ment in violation of this subsection may initiate judi-

1 cial action in a United States District Court and
2 shall be entitled to reinstatement, reimbursement for
3 lost wages and work benefits caused by the unlawful
4 acts of the employing hospital. Prevailing employees
5 are entitled to reasonable attorney's fees and costs
6 associated with pursuing the case.

7 “(3) RELIEF FOR PREVAILING PATIENTS.—A
8 patient who has been discriminated or retaliated
9 against in violation of this subsection may initiate
10 judicial action in a United States District Court. A
11 prevailing patient shall be entitled to liquidated
12 damages of \$5,000 for a violation of this statute in
13 addition to any other damages under other applica-
14 ble statutes, regulations or common law. Prevailing
15 patients are entitled to reasonable attorney's fees
16 and costs associated with pursuing the case.

17 “(4) LIMITATION ON ACTIONS.—No action may
18 be brought under paragraph (2) or (3) more than 2
19 years after the discrimination or retaliation with re-
20 spect to which the action is brought.

21 “(5) TREATMENT OF ADVERSE EMPLOYMENT
22 ACTIONS.—For purposes of this subsection—

23 “(A) an adverse employment action shall
24 be treated as ‘retaliation or discrimination’; and

1 “(B) an adverse employment action in-
2 cludes—

3 “(i) the failure to promote an indi-
4 vidual or provide any other employment-re-
5 lated benefit for which the individual would
6 otherwise be eligible;

7 “(ii) an adverse evaluation or decision
8 made in relation to accreditation, certifi-
9 cation, credentialing, or licensing of the in-
10 dividual; and

11 “(iii) a personnel action that is ad-
12 verse to the individual concerned.

13 “(g) RULES OF CONSTRUCTION.—

14 “(1) RELATIONSHIP TO STATE LAWS.—Nothing
15 in this section shall be construed as exempting or re-
16 lieving any person from any liability, duty, penalty,
17 or punishment provided by any present or future law
18 of any State or political subdivision of a State, other
19 than any such law which purports to require or per-
20 mit the doing of any act which would be an unlawful
21 practice under this title.

22 “(2) RELATIONSHIP TO CONDUCT PROHIBITED
23 UNDER THE NATIONAL LABOR RELATIONS ACT.—
24 Nothing in this section shall be construed as permit-
25 ting conduct prohibited under the National Labor

1 Relations Act or under any other federal, State, or
2 local collective bargaining law.

3 “(h) REGULATIONS.—The Secretary shall promul-
4 gate such regulations as are appropriate and necessary to
5 implement this Act.

6 “(i) DEFINITIONS.—For purposes of this section—

7 “(1) the term ‘participating hospital’ means a
8 hospital that has entered into a provider agreement
9 under section 1866;

10 “(2) the term ‘registered nurse’ means an indi-
11 vidual who has been granted a license to practice as
12 a registered nurse in at least one State;

13 “(3) the term ‘unit’ of a hospital is an organi-
14 zational department or separate geographic area of
15 a hospital, such as a burn unit, a labor and delivery
16 room, a post-anesthesia service area, an emergency
17 department, an operating room, a pediatric unit, a
18 step-down or intermediate care unit, a specialty care
19 unit, a telemetry unit, a general medical care unit,
20 a subacute care unit, and a transitional inpatient
21 care unit;

22 “(4) a ‘shift’ is a scheduled set of hours or duty
23 period to be worked at a participating hospital; and

1 “(5) a ‘person’ includes one or more individ-
2 uals, associations, corporations, unincorporated or-
3 ganizations or labor unions.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall become effective on January 1, 2006.

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